Supreme Court, U.S.
FILED
SEP 11 1993
OFFICE OF THE CLERK

No. 93-237

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1993

DANIEL P. MALONEY,

PETITIONER,

VS.

UNITED STATES OF AMERICA, et al.,

RESPONDENT.

ON ORDER THAT THE PETITION FOR REVIEW

IS DENIED BY THE

SUPREME COURT OF WISCONSIN

SUPPLEMENTAL BRIEF

DANIEL P. MALONEY, PRO SE

RT. 1, Box 313G

Roberts, Wisconsin 54023

715-246-5519

QUESTIONS PRESENTED FOR REVIEW.

No questions presented for review, this is a supplemental brief.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES.....1

ARGUMENT.....3

1. THE NEW MATTER, DATED AUGUST 27, 1993 IS PRESENTED AS A CONFLICT OF INTEREST ISSUE; WHICH REMAINED CONCEALED FOR DEFENDANTS ADVANTAGE.....3

A. DEFENDANTS HAVE ALLEGEDLY A COMPARATIVE FAULT ISSUE BY INVOLVEMENT AND CONFLICT OF INTEREST.....5

B. COMPARABLE EXAMPLES OF ACTIONS TAKEN BY THE NUCLEAR REGULATORY COMMISSION ARE CONTRADICTORY IN REGARD TO PETITIONER'S ACTION.....8

C. THE CONFLICT OF INTERESTS MAKE THE INVESTIGATION SELF-DEFEATING.....9

CONCLUSION.....11

APPENDIX.....13

TABLE OF AUTHORITIES

Cases

Mckay V. United States, 703 F2d 464, (C.A. Colo. 1983).....6

UNC Resources, Inc. V. Benally, 518 F. Supp. 1046, (D.C. Airz. 1981).....6

Statutes

42 USC 2210.....5

42 USC 2210a.....9

42 USC 2210b.....9

Dept. of Energy Contract Clauses

952.250-70.....3,4,5,9

Hearings, U.S. Senate, House of Rep.

pg. 13, 149, Hearings on H.R. 1414 before the Subcommittee on Energy Research and Development of the Committee on Science, Space and Technology, House of Representatives, 100th Cong. 1st Sess. No. 30(1987) 10

pg. 239, Hearings on S. 44 and S. 843 before the Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works, United States Senate, 100th Cong. 1st Sess. 100-214(1987).....4

pg. 267, Legislative Inquiry on The Price-Anderson Act, Subcommittee on Energy Research and Production, of the

Committee on Science and Technology,
U.S. House of Representatives, 99th
Cong. 2nd session (1986).....5

Other Authorities

U.S. Atomic Energy Commission/Division
of Technical Information; Your Body
and Radiation, pg. 20, (1969).....7

*defendants.

Pentagon, the
Nuclear Regulatory Commission
Dept. of Energy; atomic energy comm.
Central Intelligence Agency

ARGUMENT.

1. THE NEW MATTER, DATED AUGUST 27, 1993 IS PRESENTED AS A CONFLICT OF INTEREST ISSUE; WHICH REMAINED CONCEALED FOR DEFENDANTS ADVANTAGE.

This supplemental brief is based upon intervening matter (dated August 27, 1993) and not available at the time of petitioners last filing. (appendix, pg. 24) Defendants (NRC) have made statements toward an "extra-ordinary nuclear occurrence" based upon an in-adequate investigation, and responded to by an agencies CLOSEOUT STATEMENT, from Petitioner (appendix, pg. 1) issued on (Sept. 3, 1993).

Petitioner identifies a "conflict of interest" area in the contract clauses, 952.250 clauses related to indemnification of contractors, 952.250-70, nuclear hazards indemnity. (appendix, pg. 5). 952.250 (D); DOE and the contractor on behalf of itself and others indemnified, Insofar as their interests appear, each agrees to waive: (i) (ii) (iii); (e) (1), (2), (3), (4), (5), (6), (7), and petitioner

makes reference to (J), apparently the contracts disputes clause.

Another conflict of interest area which is directly related to the contracts clause 952.250-70. (Certainly knowing and wilful violations on the part of a contractor which results in serious injury or death or major property damage would constitute a felony under the laws of every state). pg. 239, Hearings on S. 44 and S. 843 before the Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works, United States Senate, 100th Cong. 1st Sess. 100-214 (1987).

In the contracts and 42 USC 2210, the other persons indemnified may include the United States by DOE or NRC. The dumping on private property by agencies of the United States was done by definition as a <u>contractor</u>. The felony dumping at night, in violation of Acts of Congress and other Statutes suggests DOE and NRC in conjunction with other agencies acted as a contractor on behalf of the United States, the United States being other persons indemnified.

Here again the August 27, 1993 report by the NRC and the Summary Closeout correspond to the foregoing.

The phrase "other persons (s) who may be liable for public liability" arguably includes the United States. (pg. 267, Legislative Inquiry on the Price-Anderson Act, Subcommittee on Energy Research and Production, of the Committee on Science and Technology, U.S. House of Representatives, 99th Cong. 2nd session (1986).

The contract clauses and 42 USC 2210 does not directly bar petitioner's third-party indemnity action against the United States based on the foregoing and the petition, but appears to have a grave conflict of interest, which apparently concerned defendants enough to issue the August 27, 1993 paper.

A. DEFENDANTS HAVE ALLEGEDLY A COMPARATIVE FAULT ISSUE BY INVOLVEMENT AND CONFLICT OF INTEREST.

Defendants have allegedly dumped the nuclear waste, have left no indication of any

comparative fault with the State Court in any hearings or other records which appears to be consistent with the "conflict of Interest" in the foregoing and may have at their option removed the action. Petitioner makes reference to the comparative fault issue and the conflict of interest issue, and (ENO). In case UNC Resources, Inc. V. Benally, 518 F. Supp. 1046, (D.C. Airz. 1981). This section conferring original jurisdiction on United States District Courts, without regard for diversity of citizenship or amount of controversy, over any public action arising out of extraordinary nuclear occurrence did not apply where Secretary of Energy had not designated incident involved as extraordinary nuclear occurrence.

Another perceived conflict of interest from the contract clauses and 2210 may be Classified Material, like the 1400 barrels dumped in Lake Superior by the U.S. Army. (appendix, pg. 19) In Mckay V. United States, 703 F. 2d 464, (C.A. Colo. 1983), neither political question nor separation of powers doc-

trine precluded judicial relief against government for damages to property caused by radiation emissions from nuclear weapons manufacturing plant.

Petitioner, in his Closeout Summary (appendix, pg. 1) opened up the nuclear waste burial site (on private property) with a geiger counter whereby substantial radiation was indicated, (by product nuclear waste) was indicated by the characteristics it presented. This was further substantiated with clorinated hydrocarbons, (cloroform) and an indicater (dye) for acid production. Although maximum sensitivity is high (about 25 rads) clorinated hydrocarbons are very poor equivalents for tissue. (pg. 20, Your Body and Radiation, U.S. Atomic Energy Commission/Division of Technical Information. (1969). Petitioner makes very clear that the August 27, 1993 report by NRC has nothing to do with the use of the geiger counter and the opening of the nuclear waste area by petitioner. See Closeout Summary, (appendix, pg. 1).

B. COMPARABLE EXAMPLES OF ACTIONS TAKEN BY THE NUCLEAR REGULATORY COMMISSION ARE CONTRADICTORY IN REGARD TO PETITIONER'S ACTION.

The mutated animals are indicative of excessive radiation or ingestion of the nuclear material itself. See Closeout Summary, (appendix, pg. 1). The NRC report from the Kerr-McGee explosion near Gore, Oklahoma left large numbers of animals examined by experts and some of the animals were apparently deceased. The point here is that many animals apparently contaminated or suspected of contamination were attended to. The August 27, 1993 report by the NRC left a mockery of mutated animals, indicating a strong conflict of interest. This is further indicated by the health physics support offered to the Corp. of Engineers, a Mr. Robert Demsey, who is the same person regarding Nike Base 20 and the Corp. of Engineers. The lack of interest from the NRC in digging for concealed nuclear waste again presents a conflict of interest for any (ENO) determination. See Closeout Sum-

mary, (appendix, pg. 1)

C. THE CONFLICT OF INTERESTS MAKE THE INVESTIGATION SELF-DEFEATING.

952.250-70 contract clauses (appendix, pg. 9), in its entirety and specifically (D)(3), DOE and the contractor on behalf of itself and other persons indemnified, insofar as their interests appear, each agrees to waive:

The foregoing is in the event of an extraordinary nuclear occurrence; (D)(d). The government dumped licensed nuclear material on private property, a state felony, violating Acts of Congress, Federal laws, State laws, County laws and township laws. To go further on any investigation is self defeating. The conflict of interest existed apparently for several years of dumping at night. (42 USC 2210a (a)(b). Under 2210a (b) not to enter a contract if a conflict exists.

952.250-70 contract clauses (ENO) status leaves the agency waiving all defenses, as to jurisdictional or to an element in the cause of action. The foregoing appears to also leave

2210 M, procedures for emergency assistance in an adverse position.

The Nuclear Waste Fund is not funded per se out of the Treasury Dept. and other funds are not out of the Treasury Dept, but are out of funds paid for by power plant operators. (pg. 13, Hearing on H.R. 1414 before the Subcomittee on Energy Research and Development of the Committee on Science, Space and Technology, House of Representatives, 100th Cong. 1st Sess. no. 30 (1987). The conflict of Interest again appears to be extensive in regards to the August 27, 1993 NRC response.

On rare occassions, there might be overlapping coverage, but then at most, there would have to be an allocation of the liability coverage between, for example the Nuclear Regulatory Commission and the Energy Department. pg. 149, Hearings on H.R. 1414, before the Subcommittee on Energy Research and Development of the Committee on Science, Space and Technology, House of Representatives, 100th Cong. 1st Sess. no. 30 (1987).

CONCLUSION

The NRC at or near Gore, Oklahoma made and used the following report and also had a list of the following agencies/other in the report.

ASSESSMENT OF THE PUBLIC HEALTH IMPACT FROM THE ACCIDENTAL RELEASE OF UF6 AT THE SEQUOYAH FUELS CORPORATION FACILITY AT GORE, OKLAHOMA

DOCKET NO. 40-8027

LICENSE NO. SUB-1010

APPENDICES

U.S. NUCLEAR REGULATORY COMMISSION

AD HOC INTERAGENCY PUBLIC HEALTH ASSESSMENT TASK FORCE

DATA AND ANALYSIS BY:

U.S. NUCLEAR REGULATORY COMMISSION

DEPARTMENT OF ENERGY & EG&G

OAK RIDGE NATIONAL LABORATORY

STATE OF OKLAHOMA DEPT. OF HEALTH

BATTELLE PACIFIC NORTHWEST LABORATORY

BROOKHAVEN NATIONAL LABORATORY

ALSO: U.S. ENVIRONMENTAL PROTECTION AGENCY

OKLAHOMA STATE UNIVERSITY-OKLAHOMA

ANIMAL DISEASE DIAGNOSTIC LABORATORY

STILLWATER, OKLAHOMA, 74078

405-624-6623

The NRC immediately offered health physics support in regards to the U.S. Army-dumping in Lake Superior and stated since Honeywell was and is an NRC licensee, we are interested in the results of the search and recovery operations. (appendix, pg. 19).

Petitioner presents the foregoing and immediate information as a vital part of the case and the foregoing is indicative of the "conflict of interest" problem presented and further alleges that this has been a major part of the problem with the case itself.

Respectfully submitted,

Dated: 9-10-93

Daniel P. Maloney, Pro Se

Rt. 1, Box 313G

Roberts, Wisc. 54023

APPENDIX

1. Closeout Summary of Agencies.....1

2. U.S. Army dumping, Lake Superior..19

3. NRC letter, August 27, 1993.....24

Sept. 3, 1993

United States

Nuclear Regulatory Commission

Region III

799 Roosevelt Road

Glen Ellyn, Illinois

60137-5927

Darrel G. Wiedeman,

Donald E. Funk Jr.

Re: Closeout Summary of Nuclear Regulatory Commission, Dept. of Energy and Indemnified Contractors including any other relevant agencies of the U.S. Government, on allegations of Nuclear Waste dumping, Nike Base 20, surrounding property.

1. In response to the August 27, 1993 letter on a May 26, 1992 investigation of nuclear waste & other, the inspection was done in approximately 3 piece suits; whereby illegal dumping of nuclear waste is expected to be concealed, as in the ground, (underground). For example, the Kenyon, Minn. burial dump belonging to 3-M Co. was approximately an

auger type investigation to apparently approximately 5 feet. The investigation was inadequate, dated June 16, 1992, near the Nike Site, Roberts, Wisc.. Alleger Daniel P. Maloney, opened up a burial site with a geiger counter, the 1st part of 1993; excessive radiation was indicated. This was substantiated with clorinated hydrocarbons (cloroform) and an indicater (dye) for acid output; the foregoing left substantial and high radiation output. The material also glowed in the dark.

2. The investigation regarding mutated animals presents a mockery of helpless creatures, with substantial mutations, each generation and birth increasing the mutagenic characteristics in the species indicative of "radiation caused mutations". The NRC, at Gore, Oklahoma (Kerr McGee accident) used the Oklahoma University system to examine contaminated animals both dead and alive. After examination by the University System reports were developed by the NRC to evaluate the large number of animals which were contaminated by the (Kerr McGee

explosion), Gore Oklahoma. The mockery of the report of August 27, 1993 on the 1992 investigation of mutated animals around Nike Base 20, Roberts, Wis. is not only inadequate but suggests that the mutations are directly caused by the pit hole alleger Maloney located with a geiger counter and opened up with the geiger counter as a monitor the first part of 1993. It should be very clear that the area alleger Maloney opened up has nothing to do with the report issued on August 27, 1993 by the NRC.

3. The threats toward "allegers life" are on file in the St. Croix Co. Courthouse. Any other are possibily indicative of listening anxiety problems or other related, "nuclear hazard" or the existence of nuclear hazard anxiety.

4. Mr. Wiedeman indicated he would also consult with the Dept. of Energy to see what they may be doing at or near the alleged nuclear contaminated area.

5. Alleger Maloney draws attention to the clauses related to indemnification of contrac-

tors, 952. 250, and 952.250-70 Nuclear hazards indemnity. The contract clause in indemnification contracts (D) (3) 952.250; DOE and the contractor on behalf of itself and other persons indemnified, insofar as their interests appear, each agrees to waive: (i) Any issue or defense as to the conduct of the claimant or fault of persons indemnified, including but not limited to:

(A) Negligence;

(B) Contributory negligence;

(C) Assumption of risk; or

(D) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God.

(ATTACHED) 952.250; two pages.

952.250 CLAUSES RELATED TO INDEMNIFICATION OF CONTRACTORS.

952.250-70 NUCLEAR HAZARDS INDEMNITY.

In accordance with the provisions prescribed in Subpart 950.70 include the following clause in applicable contracts.

Nuclear Hazards Indemnity (Apr 1984)

(a) This clause is incorporated into this contract pursuant to the authority contained in subsection 170(d) of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)

(1) The definitions set out in the Act shall apply to this article.

(2) The term "contract location" means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation or site at which the contractor is engaged in the performance of contractual activity under this contract.

(3) The term "extraordinary nuclear occurrence" means an event which DOE has determined

to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in Subpart E of 10 CFR 140.

(b) Except as hereafter permitted or required in writing by DOE, the contractor will not be required or provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability. DOE may at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover public liability, arising out of or in connection with the contractual activity, provided that the costs of financial protection will be reimbursed to the contractor by DOE.

(c)(1) To the extent that the contractor and other persons indemnified are not compensated by any financial protection, permitted or required by DOE or the Nuclear Regulatory Com-

mission (NRC), DOE will indemnify the contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (2) of this paragraph (c); and (ii) the reasonable cost of investigating and settling claims and defending suits for damage for such public liability, provided that DOE's liability, excluding such reasonable costs, under all indemnity agreements entered into by DOE under section 170 of the Act, including this contract, shall not exceed $500 million in the aggregate for each nuclear incident occurring within the United States or $100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in paragraph (c)(1) of this section is public liability which (i) arises out of or in connection with the contractual activity; and (ii) arises out of results from:

(A) A nuclear incident which takes place at a contract location; or

(B) A nuclear incident which takes place at any other location and arises out of or in the course of the performance of contractual activity under this contract by the contractor's employees, individual consultants, borrowed personnel or other persons for the consequence of whose acts or omissions the contractor is liable, provided that such incident is not covered by any other indemnity agreement entered into by DOE or the NRC pursuant to section 170 of the Act: or

(C) A nuclear incident which arises out of or in the course of transportation of source, special nuclear, or by-product materials to or from a contract location, provided such incident is not covered by any indemnity agreement entered into by DOE with the transporting carrier, or with a carrier's organization acting for the benefit of the transporting carrier, or with a licensee of NRC, pursuant to section 170 of the Act; or

(D) A nuclear incident which involves items (such as equipment, material, facilities, or

design or other data) produced or delivered under this contract, provided such incident is not covered by any other indemnity agreement entered into by DOE or NRC pursuant to section 170 of the Act.

(d) In the event of an extraordinary nuclear occurrence which:

(1) Arises out of or results from or occurs in the course of the construction, possession, or operation of a production or utilization facility, or

(2) Arises out of or results from or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility, or

(3) During the course of the contract activity, arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or byproduct material.

DOE and the contractor on behalf of itself and other persons indemnified, insofar as

their interests appear, each agrees to waive:

(i) Any issue or defense as to the conduct of the claimant or fault of persons indemnified, including, but not limited to:

(A) Negligence;

(B) Contributory negligence:

(C) Assumption of risk; or

(D) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God.

As used herein, "conduct of the claimant" includes conduct of persons through whom the claimant derives its cause of action;

(ii) Any issue or defense as to charitable or governmental immunity;

(iii) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof, but in no event more than 20 years after the date of the nuclear incident. The waiver of any such issue or defense shall be effective regardless of whether such issue

or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(e) The waivers set forth in paragraph (d) of this clause:

(1) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(2) Shall not apply to injury or damage to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(3) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benfits therefore are either payable or required to be provided under any workmen's compensation or occupational disease law;

(4) Shall not apply to any claim for punitive or exemplary damages, provided, with

respect to any claim for wrongful death under any State law which provides for damages only punitive in nature, this exclusion does not apply to the extent that the claimant has sustained actual damages, measured by the pecuniary injuries resulting from such death but not to exceed the maximum amount otherwise recoverable under such law;

(5) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(6) Shall be effective only with respect to those obligations set forth in this agreement and in insurance policies, contracts or other proof of financial protection; and

(7) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the limit of liability provisions under subsection 170e of the Atomic Energy Act of 1954, as amended, and (ii) the terms of this agreement and the terms of insurance policies, contracts or other

proof of financial protection.

(f) The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (c)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. When DOE shall determine that the Government will probably be required to make indemnity payments under the provisions of (c) above, DOE shall have the right to, and shall collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right (1) to require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder, and (2) to appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be re-

quired to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the contractor or other person indemnified shall furnish by DOE, the contractor or other person indemnified shall furnish all-reasonable assistance in effecting a settlement or asserting a defense.

(g) The indemnity provided by this clause shall not apply to public liability arising out of, or in connection with, any activity that is performed at a licensed facility, and that is covered by a Nuclear Regulatory Commission indemnity agreement authorized by section 170 of the Act.

(h) The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this

contract.

(i) The parties to this contract enter into this clause upon the condition that this clause may be amended at any time by the mutual written agreement of DOE and the contractor, and that such amendment may, by its express terms, provide that it will apply to any nuclear incidents which occur thereafter.

(j) The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the Disputes clause provided, however, that the following provisions of the contract: Clause entitled, Covenant Against Contingent Fees; the clause intitled, Officials Not to Benifit; and the clause entitled, Examination of Records by Comptroller General; and any provisions later added to this contract which under applicable Federal law, including statutes, executive orders and regulations, are required to be included in agreements of the type contained in this article, shall apply to this clause.

ALTERNATE I: The following paragraph will

be included in for those contracts containing the indemnity clause executed under the general contract authority of DOE.

(k) To the extent that the Contractor is compensated by any financial protection, or is indemnified pursuant to this clause or is same, pursuant to section 170e of the Atomic Energy Act of 1954, as amended, the provisions of clause providing General Authority Indemnity, shall not apply.

The mockery of the mutated animals and the Gore, Oklahoma (Kerr McGee explosion) investigation whereby animals were immediately examined intensively by qualified University Officials of the Oklahoma university system indicates that the contract clauses and negligence are leaving a total inadequate investigation. 952.250-70.

The NRC jumped into the barrel dumping in Lake Superior by the U.S. ARMY, offering immediate health physics to whatever was needed. The 1400 barrels dumped in Lake Superior and the health physics response by the NRC is not apparent at the investigation at or near NIKE BASE 20, Roberts, Wisc.. It is more apparent that 952.250-70 contract clauses whereby the agency and the contractor waive any issues or defenses. (D); are conflict of interest.

6. Mr. Hoffman, Mark Hoffman from the Minnesota Pollution Control Agency may have made a "slip of the tongue" about UFO visitors; Marks former Father-in-law Mr. Cooklock head of the Univ. of Wis. River Falls, library system has been chasing UFOs and related activities for many years and has a very extensive

record system on the foregoing at the UW-RF. The local Government officials can furnish any of Mr. Cooklock's records as needed.

7. The use of special radiation equipment is indicated by the characteristics of the animal mutations and substantial radiation from the opened up pit area by alleger Maloney and the elaborate equipment may have to be directed from several Private Laboratories such as the NRC used at Gore, Oklahoma. The conflict of interest of any actions regarding 952.250-70 and other actions; apparently are going to override any adequate investigation.

Dated: 9-3-93

Daniel P. Maloney
Rt. 1, Box 313G
Roberts, Wisc. 54023

St. Paul District Army Corps

of Engineers

ATTN: Mr. Robert Dempsey :::::IN NIKE BASE PRESENTLY:

Engineer Manager

1421 U.S.P.O., Custom House

St. Paul, Mn. 55101-1479

Dear Mr. Dempsey:

This refers to your January 2, 1991 telephone conversation with Mr. James Lynch of my staff, regarding the Corp's efforts to recover Honeywell, Inc. waste drums from Lake Superior. Since it is alleged that the drums may contain radioactive material and since Honeywell was and is an NRC licensee, we are interested in the results of the search and recovery operations.

Please keep this office informed of any developments relating to the recovery efforts. We would also appreciate a copy of your report, which we understand should be available in February, and a copy of the Army's 1977 report on this same subject. If health physics support is needed during the process, we will make every effort to assist you. Your cooperation in this matter is greatly appreciated. Followup information or questions regarding this issue should be addressed to Mr. Lynch or Mr. J.

Caniano at (708) 790-5500.

Sincerely,

John A. Grobe, Chief

Nuclear Materials Safety

Branch

cc: DCD/DCB (RIDS)

Materials License File

No. SUB-971)

bcc: D. Funk

RIII	RIII	RIII
Lynch/jl	Caniano	Grobe
1-8-91	1-8-91	1-9

MEDIA ADVISORY

CORPS AWARDS CONTRACT FOR LAKE SUPERIOR BARREL SEARCH

WHO: St. Paul District, U.S. Army Corps of Engineers, St. Paul, Minnesota

WHAT: Has awarded a contract to Hazard Control, Inc. of Minneapolis, Minn. in the amount of $16,550.00 to conduct a search of the Lake Superior bottom near Duluth, Minn. for barrels dumped into Lake Superior by the U.S. Army between 1959 and 1962. The 1,437 barrels contain metal scraps produced during the research and manufacture of classified munitions.

The search operation has three phases. First, the contractor will conduct an electronic search of the 20-square mile target area using sonar and electro-magnetic detection systems. The second phase of the search involves a search of possible barrel locations based on historical records and data from the electronic search. The second phase will use a two-person submarine provided by the contractor to attempt to locate and photograph as many barrels as possible. The contract allows for approximately five days of search operations. If time permits within the contract, a third phase might include closer inspection of located barrels and an at-

tempt to recover one or two barrels. Any barrel recovered will be sealed in an over-sized container and sent to an independent laboratory for analysis of the contents.

WHERE: The search operation will be conducted in an approximately 20-square mile area off the North Shore of Lake Superior between the Lester River and the Knife River. Records indicate that the barrels were dumped in water greater than 100-300 feet in depth.

WHEN: The contract was awarded on September 28, 1990. The search is tentatively scheduled to begin on Thursday October 11, 1990, weather permitting.

WHY: The barrel search project is being condcuted under the Defense Environmental Restoration Program, a Department of Defense subsection of the EPA Superfund Program. One aspect of the restoration program includes finding and inspecting sites formerly owned or used by DOD. Once located, the sites are inspected for hazardous debris, munitions or toxic materials related to the operation of the site by DOD. Since the barrels contained material generated by a DOD contractor working on a classified defense munitions contract and the disposal was directed by an Army organization, the barrel disposal site

qualifies for review and analysis under the Defense Environmental Restoration Program for Formely Used Defense Sites. The current contract will provide data to be used by the Corps in determining the need for any future remedial action.

MEDIA ARRANGEMENTS: Media arrangements (news conferences, equipment demonstration,, Duluth media center telephone number, etc.) will be announced on October 9th.

CONTACT: Ken Gardner or Joan Guilfoyle at 612-220-0201. US Army Corps of Engineers, 1421 US Post Office, St. Paul MN 55101-9808. The project's media center will open at the Corps' Duluth Area Office on Thursday, October 11th.

UNITED STATES

NUCLEAR REGULATORY COMMISSION

REGION III

799 ROOSEVELT ROAD

GLEN ELLYN, ILLINOIS 60137-5927

August 27, 1993

AMS NO. RIII-93-A-0077

Daniel P. Maloney

Rt. 1, Box 313G

Roberts, Wisc. 54023

Dear Mr. Maloney:

By letter dated June 4, 1993, you provided the U.S. Nuclear Regulatory Commission with information concerning a non-licensed dump site in Hudson, Wisconsin. Our review into your allegation would be closed based upon the following facts:

-Our inspection into your previous concerns on May 26, 1992 included radiation surveys around the Nike Missile Site were unsubstantiated, Report No. 99990003/92-023 (DRSS), attached;

-The NRC does not have regulatory jurisdiction over natural occurring radioactive mat-

erial (NORM), e.g. radium-226; however, the State of Wisconsin is the cognizant authority over these materials;

-Prior the our 1992 inspection the State of Wisconsin, Department of Health was notified to participate in the inspection; however, they declined.

Your cooperation with the U.S. Nuclear Regulatory Commission was appreciated.

Sincerely,

Donald E. Funk Jr.
Office Allegation Coordinator

Enclosure: As stated

UNITED STATES

NUCLEAR REGULATORY COMMISSION

REGION III

799 ROOSEVELT ROAD

GLEN ELLYN, ILLINOIS 60137

Jun 16 1992

License No. Non-Licensee

Docket No. 99990003

Memorandum To: Region III Files

FROM: D.G. Wiedeman, Senior Health Physicist
Ray Glinski, Radiation Specialist

THRU: John A. Grobe, Chief, Nuclear Materials Safety Branch
Roy J. Caniano, Chief, Fuel Facilities and Contaminated Sites Section

SUBJECT: TRIP REPORT RE: RESOLUTION OF ALLEGATION NO. RIII-92-A-0029, ALLEGED NUCLEAR WASTE DUMPING, ROBERTS, WISCONSIN.
Report No. 99990003/92-023(DRSS)

On March 16, 1992, Region III received a letter dated February 12, 1992 (see Attachment A) from a citizen residing in Roberts, Wisconsin. This letter alleged numerous (non-specific) allegations regarding animal mutations, thyroid problems and radiological contamination to the environment in and around the town of Roberts, Wisconsin. The alleger also provided the NRC with 23 photographs of plywood labeled "3M-Hall INTERNATIONAL-SURGICAL" that the alleger assumed were radiologically contaminated (see Attachment B). An allegation review board was conducted on March 27, 1992, and it was decided that a radiologic survey could be conducted when an inspector was in the general area. On April 7, 1992, I contacted the alleger by phone to have him clarify the allegations and to inform him that I wanted to meet with him on May 26, 1992, to perform a radiologic survey and determine if radiation or contamination were present. The alleger clarified the allegations, which were (1) the alleger assumed that the plywood in the photographs

was contaminated with radioactive material because the labeling on the plywood was from 3M, a local company in St. Paul, Minnesota area that has an NRC license to possess and use radioactive material and he knew that a man named Hall worked with radioactive material at 3M. This plywood was used to construct a chicken house and recently hatched chicks had malformations on the toe of the chicks claw. The alleger assumed that the malformations were mutations caused by exposure to radiation. The alleger was also concerned about mutations seen in other non-domestic wild life, e.g. five foot long blue racer snake and a house cat with two paws on one leg (See Attachment C), the alleger also claimed to have observed in the local area, a mountain lion with three paws on a rear leg. The alleger was also concerned about radiologic contamination in and around the property near a former Nike missile base located near his residence, and also claimed that he first became aware of the radiologic contamination from an individual by the name of Mark Hoffman that

was employed at the Minnesota Pollution Control Agency. In this respect the alleger claimed that Mr. Hoffman conducted a radiation survey with a Geiger counter and showed the alleger various areas in and around the allegers property that were radiologically contaminated. The alleger also claimed that his life has been threatened by various federal, state and local government agency representatives because of his knowledge of the above referenced allegations (See Attachment D-page 2). When we questioned him specifically as to which agencies have threatened his life his response was the Central Intelligence Agency (CIA), the Pentagon and the local Deputy Sheriff of Saint Croix County, Wisconsin. On the morning of May 26, 1992, Ray Glinski and I met with Messrs. Robert Wissink and Duane Hall of 3M, St. Paul, Minnesota, and showed them the 23 photographs in Attachment B, and asked them if they could identify the markings on the Plywood. According to Messrs. Wissink and Hall, the blue colored "3M" logo was discontinued approximately 15 years ago and the company currently uses a red logo. The labeling "HALL INTERNATIONAL-SURGICAL" was a subsidiary of 3M

that was liquidated in September 1974. This subsidiary of 3M was involved in the manufacturing and distribution of surgical equipment and neurological devices sold to the medical field. This subsidiary was not involved in any manufacturing or distribution of radioactive devices or equipment. Messrs. Wissink and Hall assumed that the plywood was a shipping crate that was sold as scrap, which was common practice for 3M.

On the afternoon of May 26, 1992, we met with Max Ihrke, Captain, St. Croix County Sheriff Office to discuss his knowledge of radioactive dumping in the Roberts, Wisconsin area. Captain Ihrke indicated that an individual living in the town of Roberts, Wisconsin has made numerous allegations regarding chemical contamination in and around the Nike missile base in Roberts, Wisconsin to various federal, state and local agencies along with requests for a congressional investigation into improprieties of various federal agencies. According to Captain Ihrke, none of the allegations

have been substantiated (See Attachment D). CAptain Ihrke also indicated that there is pending litigation from this individual against the current Deputy Sheriff's Office. On the afternoon of May 26, 1992, we met with the alleger at his home in rural Roberts, Wisconsin. The alleger showed the inspectors the chicken house that he assumed was radiologically contaminated. Radiation surveys conducted with a Ludlum, Model 3, G-M, NRC tag No. 03701, which was calibrated on January 22, 1992, and an Eberline ESP-1, alpha scintillation counter, NRC tag No. 33845, which was also last calibrated in January 1992, did not indicate any levels of radiation above natural background. Both instruments were checked for correct response to radiation with check sources of cesium-137 and thorium-230 prior to the above referenced radiologic surveys. The inspectors also followed the alleger to an area aduacent to the Nike missile base and conducted additional radiologic surveys of various areas around the Nike base that the

alleger was concerned about. Again, these surveys did not indicate any radiation above natural backgroung.

On June 1, 1992, Mr. Mark Hoffman from the Minnesota Pollution Control Agency was contacted by telephone. Mr. Hoffman stated that he lives in the area of Roberts, Wisconsin; however, he denies that he has ever performed any radiologic surveys or any other environmental evaluations in or around Roberts, Wisconsin. Mr. Hoffman claimed that his only contact with the alleger was to request permission to hunt on his property. Mr. Hoffman also indicated that being an employee with the Minnesota Pollution Control Agency, he did not have any regulatory authority in the State of Wisconsin. Mr. Hoffman also indicated that the alleger claimed that he has been visited by unidentified flying objects(UFO'S).

On June 1, 1992, Sheriff Ralph Bader, Saint Croix County Sheriff was contacted by telephone. Sheriff Bader stated that he had no direct knowledge of nuclear waste dumping in or around

the NIKE missile base in Roberts, Wisconsin. Sheriff Bader also stated that in his 60 years as a resident in the Saint Croix County area, he has never seen any large mutant animals or any mountain lions in the area.

CONCLUSION

The allegation that the plywood from a former 3M subsidiary was contaminated with radioactive material was not substantiated. This conclusion was based upon direct radiation measurements by the NRC inspectors.

The allegation that an employee from the Minnesota Pollution Control Agency conducted a radiological survey and detected radiation could not be substantiated. This conclusion was based upon statements be the individual that allegedly conducted the surveys.

The allegation that property around a NIKE missile base in Roberts, Wisconsin was contaminated with radioactive material was not substantiated. This conclusion was based upon direct rediation measurements made by the inspectors.

The allegation that mutational deformities caused by exposure to radiation in both domestic and non-domestic animals in the Roberts, Wisconsin area was not substantiated. This conclusion was based upon statements made by various long term residents in the Roberts, Wisconsin area and the NRC inspectors findings that the specific areas that the alleger claimed were radiologically contaminated did not indicate any radiation levels above natural background.

We therefore recommend that this allegation be closed and with no further foolow up inspection activities. The inspection findings were verbally explained to the alleger during the on-site inspection conducted on May 26, 1992.

Darrel G Wiedeman
Senior Health Physicist
Fuel Facilities and
Contaminated Sites Section

Attachments: As Stated

A. Letter dated 2-12-92 (1 page)

B. Photographs of plywood (23) (8 pages)

C. Photographs of snake & cats (2) (1 page)

D. Response to summons dated 3/27/89 (4 pagea)

cc: D. Funk, RIII